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January 30, 1998

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

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VIA HAND DELIVERY

Magalie Salas, Esquire  
Secretary  
Federal Communications Commission  
1919 M Street, N.W., Room 222  
Washington, D.C. 20554

Re: Motion to Accept Late-Filed Reply Comments in CC Docket 96-45, Universal Service Report to Congress

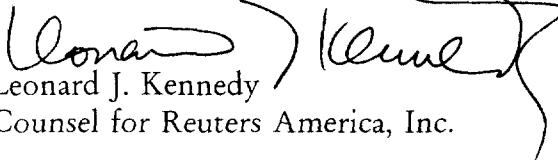
Dear Ms. Salas:

Reuters America, Inc. ("Reuters") by its attorneys, hereby respectfully requests that this Commission grant the instant motion to accept its late-filed Comments in the above-referenced proceeding.<sup>1/</sup> As indicated on the attached service list, we have provided copies of these Comments directly to other commenters to ensure that they will have an opportunity to review them before filing reply comments.

Reuters has a vital interest in the universal service proceeding. Through its participation in several dockets, Reuters has provided this Commission with useful analysis and its perspective as an information service provider and user of telecommunications facilities. Therefore, in the interests of a complete record and because the public interest would be served by granting this request, Reuters respectfully requests that the Commission accept the attached Comments and incorporate them into the public record.

If you have any questions with regard to this motion, please do not hesitate to contact the undersigned.

Respectfully submitted,

  
Leonard J. Kennedy  
Counsel for Reuters America, Inc.

<sup>1/</sup> Comments in this proceeding were due by January 26, 1997. See *Public Notice*, CC Docket No. 96-45, (released January 14, 1998).

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BEFORE THE  
**FEDERAL COMMUNICATIONS COMMISSION**  
WASHINGTON, D.C. 20554

In the Matter of	)	
	)	
Report to Congress on	)	CC Docket No. 96-45
Universal Service Under the	)	(Report to Congress)
Telecommunications Act of 1996	)	

**COMMENTS OF REUTERS AMERICA, INC.**

**I. INTRODUCTION**

Reuters America Inc. ("Reuters") is the primary operating division in the Americas of Reuters Holdings PLC (NASDAQ:RTRSY). Reuters supplies the global business community and news media with a wide range of products, including real-time financial data, transaction systems, information management systems, numeric and textual databases, print news, news pictures and television news. Reuters provides textual news of politics, economics, business, the arts, science, sports and general human interest to newspapers, radio and television stations, governments and international financial institutions. In addition, Reuters delivers, direct to traders' desks, live coverage of events that move markets.

Information is obtained from approximately 261 exchanges and over-the-counter markets, from 4,800 subscribers who contribute data directly to Reuters, and from a network of over 1,960 journalists, photographers and cameramen. There are over 362,000 user accesses for Reuters

products around the world, including accesses by clients using their own terminals. Reuters businesses in the Americas employ over 4,000 people.

As a major consumer of communications services, Reuters is very sensitive to the cost of underlying communications.

## **II. ISSUES ON WHICH THE COMMISSION IS SEEKING COMMENTS**

The Commission seeks public comment in connection with a report to Congress on universal service required by statute, concerning the extent to which the Commission's interpretation of the universal service provisions of the 1996 Act are consistent with the plain language of the 1996 Act. Congress identified several issues that could have a significant impact on Reuters. It directed the Commission to report on the definitions of "information service," "local exchange carrier," "telecommunications," "telecommunications carrier," and "telephone exchange service" in section 3 of the Act, and the impact of the interpretation of those definitions on the provision of universal service. Congress directed the Commission to report on the application of those definitions to mixed or hybrid services and the impact of this application on universal service, and the consistency of the Commission's applications of those definitions. Congress also directed the Commission to address who is required to contribute to universal service under section 254(d) of the Act and related existing Federal universal service support mechanisms, and any exemption of providers or exclusion of any service that includes telecommunications from such requirement or support mechanism.

### III. REUTERS' POSITIONS ON THE ISSUES

Under the '96 Act, the Commission's authority to assess universal service levies extends only to providers of "telecommunications."<sup>1/</sup> Telecommunications is defined as transmissions that do not alter the form or content of the information sent.<sup>2/</sup> By contrast, the '96 Act defines information service as "the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications."<sup>3/</sup> In language explaining a bill section that became the basis for the '96 Act's universal service provision, a Senate report states, "The definition of telecommunications service specifically excludes the offering of information services . . . precisely to avoid imposing common carrier obligations on information service providers."<sup>4/</sup> The report goes on to explain that "[i]nformation services providers do not 'provide' telecommunications services; they are users of telecommunications services."<sup>5/</sup> Eliminating any uncertainty, the report specifically states that the legislation "does not require providers of information services to contribute to universal service."<sup>6/</sup>

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<sup>1/</sup> 47 U.S.C. §254(d).

<sup>2/</sup> 47 U.S.C. §153(43).

<sup>3/</sup> 47 U.S.C. §153(20).

<sup>4/</sup> S. Rep. No. 230, 104th Cong., 1st Sess. ("Senate Report") at 28 (1996). The conference report explained that the House acceded to the Senate's proposed universal service section with modifications. The modifications reflected in the bill as adopted do not alter this analysis. See H.R. Rep. No. 458, 104th Cong., 1st Sess., at 130-134.

<sup>5/</sup> Senate Report at 28.

<sup>6/</sup> *Id.* This conclusion is not altered by the fact that the legislation as adopted contains a definition of information services derived from the AT&T Consent Decree's definition of information services, as proposed by the House, rather than a definition derived from the Commission's definition of enhanced services, as the Senate proposed. It was a matter of public record that both the Commission and the court with jurisdiction over the Decree had expressed

The Commission has likewise concluded that "telecommunications" and "information services" are mutually exclusive categories,<sup>7/</sup> and that, for that reason, information service providers are not required to contribute to universal service support mechanisms "to the extent they provide such services."<sup>8/</sup> Reuters is in the business of "making available information via telecommunications" and is, therefore, an information service provider that is not required to contribute.

The statutory definition of "telecommunications" also requires that the transmissions involved be made "between or among points specified by the user."<sup>9/</sup> Users of Reuters' information services do not specify the beginning and end points for their queried information. They merely query or receive information from web sites or financial databases whose locations are unknown to the customers and are a matter of indifference to them. Reuters is in the evolving business of providing information to its users; it is not in the business of providing telecommunications.

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the view that the two definitions were functionally equivalent. *See, e.g., U.S. v. Western Electric Co.*, 673 F.Supp. 525, 575 (D.D.C. 1987) ("... enhanced services, *i.e.*, generally speaking, information services . . ."); Filing and Review of Open Network Architecture Plans, *Memorandum Opinion and Order*, 4 FCC Rcd 1 (1988), ¶29 n. 60 ("information services" [are] a class of services that apparently is similar to enhanced services"). With those expert interpretations on the public record, Senate negotiators had little reason to insist upon their definition over the House side's definition, and the legislative history provides no evidence that either side ascribed any significance to the choice of one definition over the other.

<sup>7/</sup> After noting that 47 U.S.C. §254(h)(2) requires the Commission to enhance access to advanced telecommunications *and* information services, the Commission concluded that, if information services were a subset of advanced telecommunications, it would be repetitive to list information services. *Id.*

<sup>8/</sup> In the Matter of Federal-State Joint Board on Universal Service, *Report and Order* (FCC 97-157, released May 8, 1997) ("Universal Service First Report") at ¶788.

<sup>9/</sup> 47 U.S.C. §43.

In an apparent attempt to expand the base of contributors to universal service subsidies, the argument has been made that information services are inherently telecommunications services because information services are offered via telecommunications, and that information services should therefore be subject to universal service levies. This argument could lead to the conclusion that all business activities conducted over lines of telecommunications fall within the statutory definition of telecommunications and, therefore, would be subject to universal service levies. If Congress had intended such an outcome, it could have levied a gross receipts tax upon all businesses that subscribe to telephone service. Such an expansive interpretation is contrary to the '96 Act, however.<sup>10/</sup>

A somewhat more limited approach would be to apply the definition of "telecommunications" to all offerings that are "predominantly" telecommunications. Under this interpretation, the Commission would revert to the kind of case-by-case definitional interpretations that it followed under the Computer I rules, which ultimately proved unworkable because a boundary thus described is so vague.<sup>11/</sup> There is no indication in the statute or the legislative history that Congress intended this kind of result, either.

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<sup>10/</sup> Reuters offers end users the ability to retrieve or generate via computer the same kinds of information they might otherwise have obtained by calling a broker. In a typical service arrangement, Reuters provides its customers with the ability to query databases and access financial information to trade securities on financial markets. Reuters also supplies Internet websites with data feeds that Internet users merely access to obtain timely news and information. Reuters' services provide a capability for acquiring, retrieving, and utilizing information "via telecommunications," but Reuters is no more subject to common carrier regulation than a stock brokerage firm would be. Both kinds of services are properly defined as information services.

<sup>11/</sup> See *CCIA v. FCC*, 693 F.2d 198, 213 (D.C. Cir. 1982) ("CCIA") (affirming repeal of Computer I rules and adoption of Computer II rules).

On the contrary, Congress intended the agency to continue using the brighter kind of line that was drawn in the Computer II and Computer III proceedings, under which regulation is confined to services that are entirely transparent, and services that are enhanced in any way are deregulated. After comparing the '96 Act's definition of information service with the definition of enhanced services in its rules, the Commission correctly concluded that the statutory information services classification includes all services that the agency had previously classified as enhanced.<sup>12/</sup> Enhanced services are defined in the FCC's rules as "services, offered over common carrier transmission facilities used in interstate communications, which employ computer processing applications that act on the format, content, code, protocol or similar aspects of the subscriber's transmitted information; provide the subscriber additional, different, or restructured information; or involve subscriber interaction with stored information."<sup>13/</sup> As noted above, both the Commission and the court with jurisdiction over the AT&T Consent Decree ("the Decree") characterized the definition of enhanced services as functionally equivalent to the definition of information services in the Decree, which in turn was used as the basis for the definition of information services in the '96 Act.<sup>14/</sup> Thus, universal service levies cannot be applied to enhanced services or any of the eight kinds of service that are specifically listed in the statutory definition of information services.<sup>15/</sup>

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<sup>12/</sup> Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as Amended, CC Docket No. 96-149, *First Report and Order and Further Notice of Proposed Rulemaking* (FCC 96-489, released December 24, 1996) ("Non-Accounting Safeguards Order") at ¶102.

<sup>13/</sup> 47 C.F.R. §64.702(a).

<sup>14/</sup> See note 2, *supra*.

<sup>15/</sup> See the definition of information services recited on page 3.

In interpreting its definition of enhanced services, the Commission has repeatedly held that when a value-added network service provides basic transmission service only in conjunction with an enhanced service (such as protocol conversion), the basic transmission component is "contaminated" by the enhanced service component and the entire package of services provided to the end user customer – including the transmission component – is treated as an unregulated enhanced service.<sup>16/</sup> If the Commission had not adopted the contamination rule, it would have become involved in endless controversies, seeking to disentangle the basic from enhanced components of a vast array of services, discouraging investments by hitherto unregulated companies fearful of subjecting themselves to utility-style regulation.

The Commission's conclusion that enhanced services are a subset of information services implies that the contamination rule applies to information services as well. In that context, the contamination rule precludes any direct assessment of universal service levies upon Reuters, because its entire package of value-added services is classified as information services, and the FCC has no authority to levy such a surcharge upon information services.<sup>17/</sup> However, Reuters will be a major indirect contributor to universal service subsidies to the extent that it purchases telecommunications from other providers. The Commission has applied universal service levies not only upon common carrier telecommunications services but also upon private network operators that offer services to others for a fee on a non-common carrier basis.<sup>18/</sup>

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<sup>16/</sup> See *Computer III Phase II Order*, 2 FCC Rcd 3072 (1987); *In the Matter of Decreased Regulation of Certain Basic Telecommunications Services*, Notice of Proposed Rulemaking, 2 FCC Rcd 645, 648 (1987).

<sup>17/</sup> See note 4, *supra*.

<sup>18/</sup> Entities that exclusively provide interstate telecommunications to public safety or government entities and providers of non-common carrier satellite services are not required to



This approach is consistent both with law and with common sense. The compensation that Reuters provides to telecommunications carriers includes pass-through charges for universal service contributions. If Reuters were to make an additional contribution to federal universal service funds based on its own retail revenues, it would be contributing once according to its own revenues and a second time based on the payments Reuters makes to telecommunications providers. Imposing universal service levies in this manner on computer processing or financial information services would constitute double taxation or discriminatory regulation. At a minimum, this would violate the '96 Act's requirement that universal service contributions be assessed on an equitable and nondiscriminatory basis.<sup>19/</sup>

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contribute. *Universal Service First Report* at ¶¶777-792, 794-800.

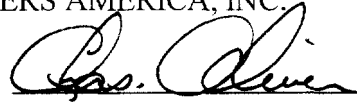
<sup>19/</sup> 47 U.S.C. §254(b)(4) and (d).

**V. CONCLUSION**

Online financial news and data services are information service providers and are not providers of telecommunications, as those terms are defined in the Telecommunications Act of 1996. Requiring such services to contribute to universal service subsidies would be contrary to law.

Respectfully submitted,  
REUTERS AMERICA, INC.

By:



Leonard J. Kennedy  
Charles M. Oliver  
Christopher Libertelli

Its Attorneys

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January 30, 1998

**CERTIFICATE OF SERVICE**

I, Roberta Lindsay, do hereby certify that on this 30th day of January, 1998, I caused copies of the foregoing "Comments of Reuters America, Inc." to be served via hand-delivery to the following:

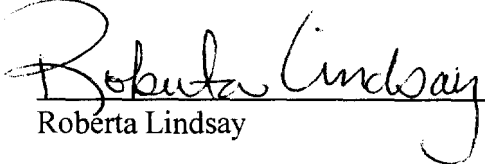
William E. Kennard, Chairman  
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Roberta Lindsay